

MAY - 3 2019

Clerk Superior Court
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,

Plaintiff,

vs.

MARY JANE JERROLL,

Defendant.

Case No. CR201800482

JUDGE JAMES L. CONLOGUE
DIVISION FIVE

PROTECTIVE ORDER

Pursuant to stipulation of the parties and good cause appearing, the Court hereby enters the following protective order governing the treatment of documents in these proceedings and thereafter:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Arizona Rule of Civil Procedure 26(c), the Health Insurance Portability and Accountability Act, A.R.S. § 8-208, 807, the Victim's Bill of Rights detailed within the Arizona Constitution at Section 2.1 (and implementing

1 statutes), or other statutes defining confidential, private, sensitive or privileged information.

2 2.3 Counsel: Attorneys for the Defendant, including current or former counsel of record,
3 or the State of Arizona (as well as their respective support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it
5 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

6 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
7 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
8 transcripts, and tangible things), that are produced or generated in disclosures or responses to
9 discovery in this matter.

10 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
11 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
12 in this action.

13 2.7. Law Enforcement: agencies engaged in enforcing the law, including, but not limited
14 to, federal, state, county or city policing agencies, probation department employees, and investigative
15 agencies tasked with evaluating and collecting information related to potential criminal acts.

16 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
17 entity not named as a Party to this action.

18 2.9 Party: any party to this action, including all of its officers, directors, employees,
19 consultants, retained experts, and Counsel (and their support staffs).

20 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
21 in this action.

22 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
23 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
24 or retrieving data in any form or medium) and their employees and subcontractors.

25 2.13 Protected Material: any Confidential Information or Item that is designated as such by
26 a party.

27 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
28 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as
3 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
6 However, the protections conferred by this Stipulation and Order do not cover the following
7 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
8 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
9 publication not involving a violation of this Order, including becoming part of the public record
10 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure
11 or obtained by the Receiving Party after the disclosure from a source who obtained the information
12 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
13 Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations imposed by this
16 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
17 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
18 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
19 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
20 limits for filing any motions or applications for extension of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
23 Non-Party that designates information or items for protection under this Order must take care to limit
24 any such designation to specific material that qualifies under the appropriate standards. The
25 Designating Party must designate for protection only those parts of material, documents, items, or oral
26 or written communications that qualify – so that other portions of the material, documents, items, or
27 communications for which protection is not warranted are not swept unjustifiably within the ambit of
28 this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
2 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
3 encumber or retard the case development process or to impose unnecessary expenses and burdens on
4 other parties) expose the Designating Party to sanctions. If it comes to a Designating Party's attention
5 that information or items that it designated for protection do not qualify for protection, the Designating
6 Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
8 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
9 Discovery Material that qualifies for protection under this Order must be clearly so designated before
10 the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents, but
13 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
14 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
15 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in the margins). Where all
17 documents contained within a compact disk, thumb drive or other electronic media storage device are
18 "CONFIDENTIAL," the Producing Party may note the designation on the compact disk, thumb drive
19 or other electronic media storage device and such designation shall be deemed to apply to each and
20 every document on the electronic media storage device. A Party or Non-Party that makes original
21 documents or materials available for inspection need not designate them for protection until after the
22 inspecting Party has indicated which material it would like copied and produced. During the inspection
23 and before the designation, all of the material made available for inspection shall be deemed
24 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and
25 produced, the Producing Party must determine which documents, or portions thereof, qualify for
26 protection under this Order. Then, before producing the specified documents, the Producing Party
27 must affix the "CONFIDENTIAL" legend to each page that contains Protected Material. If only a
28 portion or portions of the material on a page qualifies for protection, the Producing Party also must

1 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

2 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
3 Designating Party identify on the record, before the close of the deposition, hearing, or other
4 proceeding, all protected testimony.

5 (c) for information produced in some form other than documentary and for any other
6 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
7 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion
8 or portions of the information or item warrant protection, the Producing Party, to the extent practicable,
9 shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the Designating Party's right
12 to secure protection under this Order for such material. Upon timely correction of a designation, the
13 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
14 the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
19 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
20 confidentiality designation by electing not to mount a challenge promptly after the original designation
21 is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
23 by providing written notice of each designation it is challenging and describing the basis for each
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
25 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
26 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
27 process by conferring directly within 14 days of the date of service of notice. In conferring, the
28 Challenging Party must explain the basis for its belief that the confidentiality designation was not

proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. Except as otherwise mandated by law, confirmed in a writing signed by all Parties, or pursuant to subsequent orders of the Court, the Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case

1 only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
2 disclosed only to the categories of persons and under the conditions described in this Order. When the
3 litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below
4 (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a location and in a
6 secure manner that ensures that access is limited to the persons authorized under this Order.

7 7.2 Disclosure of Protected Material. Unless otherwise ordered by the court or permitted
8 in writing by the Designating Party, a Receiving Party may disclose Protected Material only to:

9 (a) Notwithstanding any other provision of this Protective Order, the Receiving Party's
10 Counsel in this action, as well as employees of said Counsel to whom it is necessary to disclose the
11 information for this litigation;

12 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this prosecution and who have signed the "Acknowledgment and Agreement
14 to Be Bound" (Exhibit A);

15 (c) Law Enforcement to whom disclosure is reasonably necessary for this prosecution and
16 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A)

17 (d) the trial and appellate courts and their employees, including court reporters transcribing
18 court proceedings;

19 (e) deposition court reporters and their staff, professional jury or trial consultants, mock
20 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
21 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
23 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
24 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound
26 by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated
27 Protective Order;

28 (g) the author or recipient of a document containing the information or a custodian or other

1 person who otherwise possessed or knew the information;

2 (h) the Clerk of the Superior Court and its employees as necessary to allow that office to
3 perform its required functions.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
8 must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
10 of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
12 other litigation that some or all of the material covered by the subpoena or order is subject to this
13 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
17 court order shall not produce any information designated in this action as "CONFIDENTIAL" before
18 a determination by the court from which the subpoena or order issued, unless the Party has obtained
19 the Designating Party's permission. The Designating Party shall bear the burden and expense of
20 seeking protection in that court of its confidential material – and nothing in these provisions should be
21 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
22 from another court.

23 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
24 LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-Party in this
26 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
27 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing
28 in these provisions should be construed as prohibiting a Non-Party from seeking additional

1 protections.

2 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
3 Party's confidential information in its possession, and the Party is subject to an agreement with th
4 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party that some or a
6 of the information requested is subject to a confidentiality agreement with a Non-Party;

7 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
8 this litigation, the relevant discovery request(s), and a reasonably specific description of th
9 information requested; and

10 (3) make the information requested available for inspection by the Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court within 14 day
12 of receiving the notice and accompanying information, the Receiving Party may produce the Nor
13 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks
14 protective order, the Receiving Party shall not produce any information in its possession or contr
15 that is subject to the confidentiality agreement with the Non-Party before a determination by the cour
16 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seekin
17 protection in this court of its Protected Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protecte
20 Material to any person or in any circumstance not authorized under this Stipulated Protective Order
21 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorize
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c
23 inform the person or persons to whom unauthorized disclosures were made of all the terms of thi
24 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to B
25 Bound" that is attached hereto as Exhibit A.

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTE
27 MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently produc

material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Arizona Ethical Rule 4.4(b) and Arizona Rules of Civil Procedure 26(f)(2).

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must first obtain a court order granting the Party the right to file the documents under seal Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of any and all Protected material including, but not limited to: pleadings; motion papers; trial, deposition and hearing

1 transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney,
2 consultant and expert work product. Any such archival copies that contain or constitute Protected
3 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, AND ENTERED BY THE
5 COURT ON THE DATE WRITTEN BELOW.

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7 DATED: May 6, 2019

Jan L. Ciliby
8 Judge of the Superior Court
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